

### **EXAMINER'S AMENDMENT**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 21, 2009 has been entered. Claims 1 and 5 are now **allowed**, subject to the examiner's amendment set forth below.
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Rhea C. Nersesian on November 30, 2009.

3. In accordance with 37 CFR 1.126, allowed claim 5 will be renumber as claim 2.

### ***Summary of the interview of November 30, 2009***

4. The examiner left a telephone message for applicant's representative on 11/30/09 and provided a draft amendment of a proposed change to claim 1. The examiner indicated that the proposed amendment was intended to clarify that the claim at lines 7-8 references a group of probes including 9 different probes each of which is defined by one of the recited SEQ ID NOs (for which basis is provided in the Table at page 20 of the specification). The examiner noted that the language proposed by

applicants in the reply and amendment of 9/21/09 encompasses, e.g., various probes comprising multiple different SEQ ID NOs, for which the specification does not provide basis; however, it appeared to the examiner (based on applicant's remarks) that the claims were in fact intended to encompass a group of probes as recited in the proposed examiner's amendment. Later on November 30, 2009, applicant's representative left a telephone message for the examiner in which she authorized the proposed amendment. Applicant's representative indicated in her message that her amendment had in fact been intended to reference the group of probes now recited in the claims.

5. **Amend the claims as follows:**

In claim 1, at lines 7-8, **delete** "by means of multiple hybridization probes, wherein said multiple hybridization probes comprise SEQ ID NOS: 3, 4, 5, 8, 9, 10, 11, 12 and 13" and **insert therefore**--by means of a group of hybridization probes, wherein said group of hybridization probes comprises the probes of each of SEQ ID NOS: 3, 4, 5, 8, 9, 10, 11, 12, and 13--.

6. **The following is an examiner's statement of reasons for allowance:**

The prior art does not teach or suggest the invention of claims 1 and 5 as amended, which claims now require the group of probes of SEQ ID NOS 3-5 and 8-13. It is noted that 16S/23S rDNA spacer sequences of staphylococci, streptococci, and enterococci were known at the time the invention was made; see, e.g., Forsman et al (Microbiology 143:3491-3500 [1997])(cited in the IDS of 09/09) and Kunsch et al (US 20020120116 A2 [published August 2002; filed May 1998]) (cited herein). Additionally, the prior art as exemplified by Edwards et al (J. Clin. Micro. 39(9):3047-3051 [9/2001])(cited herein), Ke et al (Clinical Chemistry 46(3):324-331 [2000])(cited herein), and Siefing et al (Abstracts of the General Meeting of the American Society for Microbiology 101:602 [May 2001])(cited herein) discloses the use of real-time PCR based assays directed at different target sequences (employing both primers and reporter probes) to achieve rapid detection of such bacterial targets. However, the teachings of the prior art would not have led one of skill in the art to select the particular combination of 9 probes of claim 1 for use together in the real-time PCR based assay set forth in the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

7. It is noted that a revised version of the 1449 filed August 28, 2008, and originally mailed to applicant September 18, 2008, is enclosed herewith. The examiner has completed 2 citations by providing the publication year (cite nos. 1 and 7).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diana B. Johannsen whose telephone number is 571/272-0744. The examiner can normally be reached on Monday and Thursday, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Nguyen can be reached at 571/272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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